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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **EASTERN DIVISION**

12 MORONGO BAND OF MISSION
13 INDIANS, a federally recognized Indian
14 Tribe,

15 Plaintiff,

16 vs.

17 STATE OF CALIFORNIA; GOVERNOR
18 GAVIN NEWSOM, in his official capacity,

19 Defendants.

Case No.: 5:25-cv-25-1098

**MORONGO’S COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

20 Plaintiff, the Morongo Band of Mission Indians (hereinafter “Morongo
21 Band”) by and through its attorneys of record herein, complains and alleges as
22 follows:

JURISDICTION

23 1. This Court has jurisdiction over Plaintiffs’ action pursuant to 28
24 U.S.C. §§ 1331 and 1362, in that the Morongo Band’s claims arise under the laws
25 of the United States, in particular the Indian Gaming Regulatory Act of 1988
26 (“IGRA”), 25 U.S.C. § 2710(d)(7)(A)(i), and Section 13.1(e) of the class III
27 gaming compact (“Compact”) executed by Plaintiff and the State of California that
28 took effect on January 22, 2018, when notice was published in the *Federal Register*

1 by the U.S. Department of the Interior that the Compact was “considered to be
2 approved . . . but only to the extent . . . consistent with IGRA.” Defendant State of
3 California affirmatively has waived its sovereign immunity to suit pursuant to Cal.
4 Gov’t. Code § 98005 and Section 13.4 of the Compact, the parties having met and
5 conferred concerning this dispute pursuant to Section 13.1 of the Compact prior to
6 the Morongo Band’s filing of this action.

7 **VENUE**

8 2. Venue in this action lies in this District pursuant to 28 U.S.C. §
9 1391(b), Cal. Civ. Proc. Code § 401, and § 13.1(e) of the Compact because the
10 State’s Attorney General maintains an office in Riverside County and the Morongo
11 Band’s Gaming Facilities are located in Riverside County, within the Eastern
12 Division of the Central District of California.

13 **PARTIES**

14 3. The Morongo Band of Mission Indians is a federally recognized
15 Indian tribe eligible to receive services from the United States Bureau of Indian
16 Affairs, and has a governing body recognized by the Secretary of the Interior
17 (“Secretary”). *See* 89 Fed. Reg. 99,899, 99,900 (Dec. 11, 2024).

18 4. Defendant, the State of California (“State”), is a sovereign state of the
19 United States, and is a party to the Compact.

20 5. Defendant Gavin Newsom is the duly-elected Governor of the State of
21 California and is sued in his official capacity as the State’s authorized negotiator of
22 tribal-state class III gaming compacts.

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

24 6. The Morongo Band is the beneficial owner of the unallotted tribal trust
25 lands and exercises governmental authority over the lands of the Morongo Indian
26 Reservation (“Reservation”) located in Riverside County, California. The United
27 States has held legal title to the lands of the Reservation in trust for the benefit of
28 the Morongo Band since before October 17, 1988; thus, the Reservation is “Indian

1 country” within the meaning of 18 U.S.C. § 1151, and “Indian lands” as defined in
2 25 U.S.C. § 2703(4).

3 7. IGRA categorizes gaming into three “classes”: *i.e.*, social games for
4 prizes of minimal value and ceremonial games (“class I”); bingo and games similar
5 to bingo, including electronic, computer or other technologic aids to such games,
6 and non-banking card games, to the extent either expressly authorized or not
7 expressly prohibited by State law (“class II”); and all other forms of gaming,
8 including electronic facsimiles of games of chance and slot machines of any kind
9 (“class III”).

10 8. Under IGRA, in order to conduct class III gaming on a tribe’s “Indian
11 lands” as defined in 25 U.S.C. § 2703(3), the tribe must request that the State enter
12 into negotiations for a tribal-state “compact” setting forth the terms and conditions
13 under which the tribe may conduct class III “gaming activities,” in response to
14 which request the State is obligated to negotiate in good faith. 25 U.S.C.
15 § 2710(3)(A).

16 9. 25 U.S.C. § 2710(d)(3)(C), the section of IGRA addressing the
17 operation of class III gaming activities, provides that a compact may include
18 provisions relating to—

19 (i) the application of the criminal and civil laws and
20 regulations of the Indian tribe or the State that are directly
21 related to, and necessary for, the licensing and regulation
22 of such activity;

23 (ii) the allocation of criminal and civil jurisdiction between
24 the State and the Indian tribe necessary for the enforcement
25 of such laws and regulations;

26 (iii) the assessment by the State of such activities in such
27 amounts as are necessary to defray the costs of regulating
28 such activity;

- 1 (iv) taxation by the Indian tribe of such activity in amounts
- 2 comparable to amounts assessed by the State for
- 3 comparable activities;
- 4 (v) remedies for breach of contract;
- 5 (vi) standards for the operation of such activity and
- 6 maintenance of the gaming facility, including licensing;
- 7 and
- 8 (vii) any other subjects that are directly related to the
- 9 operation of gaming activities.

10 This list of seven topics is exhaustive; to be consistent with IGRA, a class III
11 gaming compact may not include provisions that do not directly relate to the topics
12 listed. *Chicken Ranch Rancheria v. California.*, 42 F.4th 1024, 1034–36 (9th Cir.
13 2022). Moreover, all subjects addressed in a class III gaming compact must be
14 directly related to the operation of class III gaming activities. *Id.* at 1036.

15 10. Under IGRA, a State’s insistence upon addressing subjects in class III
16 gaming compact other than those enumerated in 25 U.S.C. § 2710(d)(3)(C) is
17 evidence of a failure to negotiate in good faith. *Chicken Ranch*, 42 F.4th at 1040–
18 41.

19 11. IGRA, at 25 U.S.C. § 2710(d)(4), does not grant “a State or any of its
20 political subdivisions authority to impose any tax, fee, charge, or other assessment
21 upon an Indian tribe or upon any other person or entity authorized by an Indian
22 tribe to engage in a class III activity.”

23 12. IGRA, at 25 U.S.C. § 2710(d)(4), further provides that the State may
24 not in good faith refuse to enter into compact negotiations based on the State’s or
25 its subdivisions’ lack of authority to impose any tax, fee, charge, or assessment on
26 the tribe or its lands.

27 13. In 1999, the State of California executed class III gaming compacts
28 (“1999 Compact”) with many tribes, including the Morongo Band, contingent upon

1 voter approval in March 2000, of an amendment to Article IV, § 19(e) of the
2 California Constitution authorizing the Governor to negotiate and the Legislature to
3 ratify compacts authorizing federally recognized California tribes to operate on
4 their Indian lands slot machines, banked and percentage card games, and games
5 and equipment authorized to the State Lottery. The 1999 Compact required the
6 Morongo Band to make payments into two funds related to its operation of class III
7 gaming devices: the Indian Gaming Special Distribution Fund (“SDF”) and the
8 Indian Gaming Revenue Sharing Trust Fund (“RSTF”).

9 14. In 2006, the Morongo Band and the State agreed to certain
10 amendments to its 1999 Compact (“2006 Compact Amendment”). Among other
11 things, the amendments required that the Morongo Band contribute \$2,000,000
12 annually into the RSTF (increased from approximately \$22,000 under the 1999
13 Compact), \$36,700,000 annually into the State’s General Fund, and millions of
14 dollars more into the State’s General Fund based on the “net win” from the class III
15 gaming devices it operated.

16 15. In August 2011, the Morongo Band contacted then-Governor Brown’s
17 office to initiate renegotiation of its then-current Compact. In late 2017, the
18 Morongo Band and the State executed and the California Legislature ratified a new
19 Compact. That Compact (“2018 Compact”), along with compacts between the State
20 and eight other California tribes, took effect on January 22, 2018, upon publication
21 in the *Federal Register* of the Department of the Interior’s notice that these new
22 Compacts were “considered to have been approved, but only to the extent the
23 compacts are consistent with IGRA.” 83 Fed. Reg. 3015, 3016 (Jan. 22, 2018). A
24 true copy of the 2018 Compact is attached hereto as Exhibit 1, and by this reference
25 incorporated herein as if set forth in full.

26 16. In a letter dated April 29, 2024, the Morongo Band notified the State
27 in writing, pursuant to Section 13.1 of the 2018 Compact, that a dispute existed
28 between the Morongo Band and the State concerning whether, consistent with the

1 Ninth Circuit’s July 2022 decision in *Chicken Ranch*, all or parts of the following
2 Compact sections are inconsistent with IGRA and thus were never approved and
3 are unenforceable:

- 4 a. Section 2.12 (definition of “Gaming Employee”);
- 5 b. Section 2.13 (definition of “Gaming Facility”);
- 6 c. Section 2.14 (definition of “Gaming Operation”);
- 7 d. Section 2.20 (definition of “Interested Persons”);
- 8 e. Section 2.25 (definition of “Project”);
- 9 f. Section 2.27 (definition of “Significant Effect(s) on the Off-
10 Reservation Environment”);
- 11 g. Section 2.31 (definition of “TEIR”);
- 12 h. Section 4.3 (requiring payments into the SDF in excess of
13 amounts necessary to defray the State’s reasonable and necessary regulatory costs,
14 and improper uses of SDF payments);
- 15 i. Section 4.6 (illusory remedies for loss of exclusivity and
16 reduction of the exclusivity for banked and percentage card games conferred in the
17 Morongo Band’s 2006 Compact Amendment);
- 18 j. Section 5.1 (Requiring excessive payments into the
19 RSTF/TNGF constitutes an impermissible tax, fee, or other assessment; and the
20 TNGF, which was imposed by the State, is not directly related to the operation of
21 class III gaming activities);
- 22 k. Section 5.2 (Local Community Benefit Fund, imposed by the
23 State, constitutes an impermissible tax and is not directly related to the operation of
24 class III gaming activities);
- 25 l. Section 11 (Off-Reservation Environmental and Economic
26 Impacts effectively imposes California’s environmental laws on the Reservation
27 and applies to activities and projects not directly related to the operation of class III
28 gaming activities);

1 m. Section 12.2(f) (Workplace discrimination, harassment, and
2 retaliation requirements are preempted by federal laws exempting tribes from
3 definition of “employer” and apply to persons not directly related to the operation
4 of class III gaming activities);

5 n. Section 12.2(g) (Prohibition against cashing checks drawn
6 against government accounts is not directly related to operation of class III gaming
7 activities);

8 o. Section 12.2(k) (Compliance with California’s minimum wage
9 law and regulations is not directly related to operation of class III gaming
10 activities);

11 p. Section 12.4 (Insurance and Tort Liability impermissibly
12 extends State law and jurisdiction to claims that are not directly related to the
13 operation of class III gaming activities);

14 q. Section 12.5(d) (Withholding of state taxes from employee
15 wages is not directly related to operation of class III gaming activities);

16 r. Section 12.9 (State-imposed new Tribal Labor Relations
17 Ordinance applies to persons and areas not directly related to the operation of class
18 III gaming activities and discriminates against the Morongo Band relative to other
19 California employers subject to NLRB’s jurisdiction); and

20 s. Section 12.10 (Honoring State Court Child/Spousal Support
21 Orders is not directly related to the operation of class III gaming activities).

22 17. Pursuant to Section 13.1 of the 2018 Compact, the Morongo Band and
23 the State have met and conferred through correspondence and in person about the
24 disputed Compact provisions identified in Paragraph 16(a)–(s) above. The State
25 concedes that under the Ninth Circuit’s decision in *Chicken Ranch*, several of the
26 provisions disputed by the Morongo Band are not consistent with IGRA and thus
27 cannot be enforced, but the State continues to assert that the other disputed
28 provisions that the State contends were not addressed in *Chicken Ranch* are

1 consistent with IGRA, thus leaving the dispute as to the other disputed provisions
2 unresolved.

3 **FIRST CLAIM FOR RELIEF**

4 **Specific Provisions of the 2018 Compact Are Inconsistent With IGRA and**
5 **Thus to That Extent Are Unenforceable**

6 18. The Morongo Band hereby realleges and by this reference
7 incorporates herein each of the allegations set forth in Paragraphs 6-17 above as if
8 set forth in full.

9 **COUNT ONE**

10 **(Definition of “Gaming Employee”)**

11 19. Section 2.12 (“Gaming Employee”) of the 2018 Compact defines
12 “Gaming Employee” to include “any natural person who . . . (b) is in a category
13 under federal or tribal gaming law requiring licensing.” This definition
14 encompasses employees whose duties are unrelated to the operation or regulation
15 of class III gaming activities and thereby goes beyond the list of permissible topics
16 of negotiation under IGRA. In this respect, Section 2.12 is not necessary for and
17 directly related to the regulation and licensing of class III gaming activities or
18 otherwise directly related to the operation of class III gaming activities, and is not
19 consistent with IGRA, never was considered approved by the Secretary, and thus is
20 unenforceable.

21 **COUNT TWO**

22 **(Definition of “Gaming Facility”)**

23 20. Section 2.13 (“Gaming Facility”) of the 2018 Compact defines
24 “Gaming Facility” as,

25 any building in which Gaming Activities occur, or, solely
26 for purposes of access by the State Gaming Agency, areas
27 in other on-Reservation buildings in which business
28 records, receipts, or funds of the Gaming Operation are

1 maintained (excluding offsite facilities primarily dedicated
2 to storage of those records, and financial institutions), *and*
3 *all rooms, buildings, and areas, including hotels, parking*
4 *lots, and walkways, the principal purpose of which is to*
5 *serve the activities of the Gaming Operation and Facility*
6 *rather than providing them with an incidental benefit.*
7 [Emphasis added].

8 21. Section 2.13 of the 2018 Compact includes within the definition of
9 “Gaming Facility” structures and areas of the Reservation within which no class III
10 gaming activities are conducted and thus are not directly related to the operation of
11 class III gaming activities. In this respect, Section 2.13 is not consistent with IGRA,
12 never was considered approved by the Secretary, and thus is unenforceable.

13 **COUNT THREE**

14 **(Definition of “Gaming Operation”)**

15 22. Section 2.14 (“Gaming Operation”) of the 2018 Compact defines
16 “Gaming Operation” as,
17 the overall business enterprise that offers and operates
18 Gaming Activities, whether exclusively or otherwise, but
19 does not include the Tribe’s governmental or other
20 proprietary activities unrelated to operation of the Gaming
21 Facility.

22 23. The definition of “Gaming Operation” encompasses activities neither
23 directly related to and necessary for the regulation and licensing nor directly related
24 to the operation of class III gaming activities. In this respect, the definition of
25 “Gaming Operation” is not consistent with IGRA, never was considered approved
26 by the Secretary, and thus is unenforceable.

27
28

COUNT FOUR

(Required Payments into the Special Distribution Fund In Excess of the State’s Actual Regulatory Costs)

24. IGRA, at 25 U.S.C. § 2710(d)(3)(C)(iii), entitles the State to insist on a compact provision requiring the Morongo Band to pay the State “such amounts as are necessary to defray the [State’s] costs of regulating [the tribe’s class III gaming activities].”

25. Section 4.3 of the 2018 Compact purports to exercise the State’s right, pursuant to 25 U.S.C. § 2710(d)(3)(C)(iii), to defray its annual costs of regulating the Morongo Band’s class III gaming activities by requiring the Band to “pay to the State on a pro rata basis the State’s 25 U.S.C. § 2710(d)(3)(C) reasonable and necessary costs incurred for purposes consistent with IGRA, including the performance of all its duties under this Compact, the administration and implementation of tribal-state class III gaming compacts generally, and funding for the Office of Problem Gambling.”

26. The Morongo Band’s payments pursuant to Section 4.3 are to be paid into the SDF.

27. Under Section 4.3 of the 2018 Compact, the Morongo Band’s “pro rata” share of the State’s costs is calculated as follows: divide the amount appropriated by the State Legislature in a given year for the State Gaming Agency's exercise of authority under the class III compacts of all California tribes by the total number of class III gaming devices operated by all California tribes annually to derive an annual fee per gaming device, and then multiply that per device fee by the maximum (not the average) number of gaming devices operated by the Morongo Band in the preceding year.

28. Section 4.3 of the 2018 Compact does not purport to require that the Morongo Band defray the State’s actual reasonable and necessary costs, and only those costs, incurred regulating the Morongo Band’s class III gaming activities in a

1 given year; rather, what the Morongo Band must pay depends on the amount the
2 California Legislature appropriates as the annual budget for the State Gaming
3 Agency, which includes the California Gambling Control Commission and the
4 California Department of Justice's Bureau of Gambling Control, as well as the
5 California Department of Health's Office of Problem Gambling and other State
6 agencies.

7 29. Section 4.3(b) of the 2018 Compact requires that the Morongo Band
8 pay at least \$3,000,000 annually into the SDF until the SDF has been "solvent" for
9 at least three consecutive years, regardless of the Morongo Band's pro rata share
10 calculated under Section 4.3(a) and regardless of the State's actual costs of
11 regulating the Morongo Band's class III gaming activities.

12 30. In accordance with Sections 4.3(a) and 4.3(b) of the 2018 Compact,
13 the Morongo Band paid \$3,000,000 annually into the SDF for calendar years 2018,
14 2019, and 2020.

15 31. In August 2021, after the Morongo Band discovered that the SDF had
16 been solvent for three consecutive years, the Morongo Band and the State entered
17 into a Letter Agreement pursuant to which the Band would, effective the first
18 calendar quarter of 2021, make annual payments into the SDF limited to its pro rata
19 share as calculated under Section 4.3(a) and continue doing so unless and until the
20 SDF "was not solvent to carry out the purposes set forth in Compact section 4.3.1,
21 in which case the parties would meet and confer to negotiate an adjusted annual
22 payment into the SDF not to exceed \$3,000,000."

23 32. Since executing the August 2021 Letter Agreement, the Morongo
24 Band has paid approximately \$1,800,000 annually into the SDF for calendar years
25 2021, 2022, 2023, and 2024.

26 33. In every year since the 2018 Compact took effect, pursuant to Section
27 4.3 of the 2018 Compact, the Morongo Band has paid into the SDF more money
28 than the State's actual annual costs of regulating the Band's class III gaming

1 activities. Moreover, the State does not know its actual annual costs of regulating
2 the Morongo Band’s class III gaming activities since the 2018 Compact took effect.

3 34. The State did not offer the Morongo Band meaningful concessions in
4 return for the State’s demand that the Band pay more into the SDF than is
5 reasonable and necessary to defray the State’s actual costs incurred regulating the
6 Morongo Band’s class III gaming activities.

7 35. The amount by which the Morongo Band’s payments into the SDF
8 pursuant to Section 4.3 of the 2018 Compact exceeds the State’s actual and
9 reasonable regulatory costs of regulating the Band’s class III gaming activities and
10 constitutes a tax, fee, or assessment prohibited under 25 U.S.C. § 2710(d)(4). To
11 that extent, Section 4.3 of the 2018 Compact is not consistent with IGRA, never
12 was considered approved by the Secretary, and is thus unenforceable.

13 **COUNT FIVE**

14 **(Unauthorized Uses of Special Distribution Fund Proceeds)**

15 36. Section 4.3.1 of the 2018 Compact prescribes the purposes for which
16 money paid into the SDF may be spent:

17 **Sec. 4.3.1. Use of Special Distribution Funds.**

18 Revenue placed in the Special Distribution Fund shall be
19 available for appropriation by the Legislature for the
20 following purposes:

21 (a) California Department of Public Health, Office of
22 Problem

23 Gambling’s prevention and treatment programs;

24 (b) Grants, including any administrative costs and
25 environmental review costs, for the support of State and/or
26 local government agencies impacted by tribal government
27 gaming;

28 (c) Compensation for regulatory costs incurred by the State

1 including, but not limited to: the Commission; the
2 California Department of Justice; the Office of the
3 Governor; the State Controller; the State Department of
4 Human Resources; the Financial Information System for
5 California; and State Designated Agencies in connection
6 with the implementation and administration of class III
7 Gaming compacts in California;

8 (d) Compensation to state and local government agencies
9 for law enforcement, fire, public safety, and other
10 emergency response services provided in response to or
11 arising from any threat to the health, welfare and safety of
12 the Tribe's Gaming Facility patrons, employees, tribal
13 members or the public generally, attributable to, or as a
14 consequence of, disputes arising on the Tribe's Indian
15 lands in connection with the Tribe's Gaming Activities or
16 Gaming Operation; and

17 (e) Any other purposes specified by the Legislature that are
18 consistent with IGRA, including funds necessary to ensure
19 adequate funding to the Revenue Sharing Trust Fund.

20 37. Section 4.3.1(b), and portions of Sections 4.3.1(c) and 4.3.1(d) of the
21 2018 Compact are neither necessary for nor directly related to the regulation and
22 licensing of the Morongo Band's class III gaming activities, nor are they directly
23 related to the Morongo Band's operation of class III gaming activities. Moreover,
24 the State has used money paid into the SDF for purposes other than those
25 enumerated in the 2018 Compact, including paying State Gaming Agency
26 personnel for activities specific to the regulation of State-licensed non-tribal
27 gambling establishments, law enforcement expenses unrelated to the operation of
28 class III gaming activities, paying the salaries of State attorneys involved in

1 litigation against tribes, including defense of this action, and various State overhead
2 costs not otherwise directly related to the regulation or operation of the Morongo
3 Band's class III gaming activities. Therefore, Section 4.3.1 of the 2018 Compact is
4 not consistent with IGRA, never was considered approved by the Secretary, and is
5 thus unenforceable.

6 **COUNT SIX**

7 **(Required Payments into the Revenue Sharing Trust Fund)**

8 38. Pursuant to its 1999 Compact, the Morongo Band was required to pay
9 approximately \$22,000 per year into the RSTF. Pursuant to its 2006 Compact
10 Amendment, the Morongo Band was required to pay \$2,000,000 annually into the
11 RSTF. Section 5.1 of the 2018 Compact requires the Morongo Band to pay into the
12 RSTF at least \$9,000,000 per year, increasing by increments of \$500,000 for each
13 increment of 500 gaming devices above 4,000 slot machines, to a maximum of
14 \$11,000,000 per year for 6,000 slot machines.

15 39. Section 5.1(d) of the 2018 Compact states that the purpose of the
16 RSTF is to provide \$1,100,000 annually to RSTF-eligible tribes (defined by
17 Sections 2.21 and 2.24, respectively, as tribes operating class II gaming or fewer
18 than 350 class III gaming devices in California, or California tribes operating
19 neither class II nor class III gaming).

20 40. When combined with other tribes' payments into the RSTF, the
21 Morongo Band's obligation to pay at least \$9,000,000 per year into the RSTF far
22 exceeds the amount needed for each RSTF-eligible tribe to receive \$1,100,000 per
23 year.

24 41. The State did not offer any meaningful concessions to the Morongo
25 Band in exchange for Morongo's payment of at least \$9,000,000 per year into the
26 RSTF.

27 42. By requiring the Morongo Band to pay *any amount* of money into the
28 RSTF without offering meaningful concessions in exchange, Section 5.1 of the

1 2018 Compact imposes an impermissible tax, fee, or other assessment. Likewise,
2 Section 5.1 of the 2018 Compact imposes an impermissible tax, fee, or other
3 assessment insofar as it requires the Morongo Band to pay more into the RSTF than
4 is necessary to distribute \$1,100,000 per year to each RSTF-eligible tribe.

5 43. Section 5.1 of the 2018 Compact is not consistent with IGRA, never
6 was considered approved by the Secretary, and thus is unenforceable.

7 **COUNT SEVEN**

8 **(The Tribal Nation Grant Fund)**

9 44. Section 5.1(e) of the 2018 Compact provides that if the balance in the
10 RSTF exceeds the amount needed to distribute \$1,100,000 per year to each RSTF-
11 eligible federally recognized California tribe, the California Legislature may
12 authorize some or all of the excess to be transferred to the Tribal Nation Grant
13 Fund (“TNGF”) (as defined in Section 2.34 of the 2018 Compact).

14 45. The State insisted that the 2018 Compact include the TNGF without
15 ever consulting or negotiating with the Morongo Band about the TNGF’s formation
16 or functioning.

17 46. Under Section 5.1(f) of the 2018 Compact, a State-created
18 administrative body is to award discretionary grants from the TNGF on a
19 competitive basis to RSTF-eligible tribes. The grants are to be awarded without any
20 consultation with, input from, or approval by the Morongo Band.

21 47. Grantee tribes may use TNGF grants only for the purposes set forth in
22 their grant applications. Under Cal. Gov’t Code §§ 12019.35–40, grantee tribes are
23 prohibited from using their grants for any gaming-related purpose and prohibited
24 from distributing the grants to tribal members on a *per capita* basis; the State may
25 audit how a recipient tribe has used its grant funds.

26 48. The TNGF was imposed by the State, rather than having been
27 negotiated in return for the State’s grant of meaningful concessions, constitutes an
28 impermissible tax, fee or other assessment, is not directly related to the operation of

1 class III gaming activities, is not consistent with IGRA, never was approved, and is
2 thus unenforceable.

3 **COUNT EIGHT**

4 **(Required Payments into the Rainy Day Fund)**

5 49. Section 5.3 of the 2018 Compact requires that the Morongo Band pay
6 \$10,000,000 per year from the operation of the Morongo Casino Resort Spa, not
7 just from the operation of class III gaming activities, into a “Rainy Day Fund” until
8 the Morongo Band has paid a total of \$100,000,000 into that Fund. Section
9 5.3(a)(1) of the 2018 Compact prohibits the Morongo Band from accessing the
10 payments into the Rainy Day Fund except under specified adverse economic
11 circumstances, and then only after giving the State notice of its intention to draw
12 from its payments into the Fund.

13 50. The State did not offer the Morongo Band meaningful concessions in
14 return for including the Rainy Day Fund provision in the 2018 Compact.

15 51. Notwithstanding that the Morongo Band’s payments into the Rainy
16 Day Fund are to be derived from the Morongo Band’s operation of the Morongo
17 Casino Resort Spa, and not specifically from the Morongo Band’s revenues from
18 class III gaming activities, the Rainy Day Fund is not necessary for and directly
19 related to the regulation and licensing of the Morongo Band’s class III gaming
20 activities, or otherwise is not directly related to the operation of the Morongo
21 Band’s class III gaming activities.

22 52. The 2018 Compact’s requirement that the Morongo Band pay
23 \$10,000,000 per year into the Rainy Day Fund until the Morongo Band has paid a
24 total of at least \$100,000,000 into that fund constitutes a demand by the State for a
25 tax, fee, or other assessment as a condition for entering into the 2018 Compact, in
26 violation of 25 U.S.C. § 2710(d)(4) because the State did not offer the Morongo
27 Band meaningful concessions in return.

28 53. The 2018 Compact’s requirement that the Morongo Band pay

1 \$10,000,000 per year into the Rainy Day Fund until the Morongo Band has paid a
2 total of at least \$100,000,000 into that fund, and the restrictions the 2018 Compact
3 imposes on the Morongo Band's utilization of its own revenues in the Rainy Day
4 Fund, deprives the Morongo Band of the sovereign right to determine for itself
5 whether, and if so, for what purposes and in what amounts it will spend its
6 revenues. In this respect, the requirement is not consistent with the policy goal of
7 IGRA to, *inter alia*, enhance tribal self-determination and economic self-
8 sufficiency.

9 54. Section 5.3 of the 2018 Compact is not directly related to the operation
10 of class III gaming activities, is not consistent with IGRA, never was considered
11 approved by the Secretary, and is thus unenforceable.

12 COUNT NINE

13 **(Required Payments into the Local Community Benefit Fund)**

14 55. Section 5.2(a) of the 2018 Compact obligates the Morongo Band to
15 pay at least \$15,000,000 per year into a "Local Community Benefit Fund"
16 ("LCBF") from which the Morongo Band is to make grants and expenditures for
17 ten enumerated purposes, subject to the State's right of prior review and subsequent
18 disallowance, for the duration of the 2018 Compact. Section 5.2(a) of the 2018
19 Compact also provides that if the Morongo Band does not make monthly payments
20 into the Rainy Day Fund because it has already paid \$100,000,000 into that Fund,
21 the Morongo Band must make an additional monthly payment of \$750,000 into the
22 LCBF, for a total of as much as \$24,000,000 per year.

23 56. None of the ten enumerated purposes for which the Morongo Band
24 may make grants or other expenditures from LCBF is directly related to the
25 operation of the Morongo Band's class III gaming activities, and only one, section
26 5.2(a)(3), is even *tangentially* connected. That subsection provides that, "the Tribe
27 may utilize up to twenty percent (20%) of the monies deposited into the Local
28 Community Benefit Fund annually for the purpose of serving [*sic*] any of its debt

1 that is secured, in whole or in part, by the revenues or other assets of the Gaming
2 Operation.”

3 57. Section 5.2(c) of the 2018 Compact requires the Morongo Band to
4 give the State advance notice of proposed expenditures from the LCBF and
5 empowers the State to dispute proposed expenditures.

6 58. Section 5.2(d) of the 2018 Compact requires the Morongo Band to
7 provide the State with an annual accounting of each prior year’s expenditures from
8 the LCBF in “sufficient detail to enable both parties to ensure that the funds are
9 being used in a manner consistent with the purposes set forth in subdivision (a)(1)
10 through (a)(10).”

11 59. The State did not offer the Morongo Band any meaningful concessions
12 in return for the Compact’s requirement that the Morongo Band establish and pay
13 \$15,000,000 per year into the LCBF for the life of the Compact, much less that the
14 Band, under certain circumstances, must increase those payments to as much as
15 \$24,000,000 per year.

16 60. “A state may, without acting in bad faith, request revenue sharing if
17 the revenue sharing provision is (a) for uses ‘directly related to the operation of
18 gaming activities’ in § 2710(d)(3)(C)(vii), (b) consistent with the purposes of
19 IGRA, and (c) not ‘imposed’ because it is bargained for in exchange for a
20 ‘meaningful concession.’” *Rincon Band of Luiseño Mission Indians v.*
21 *Schwarzenegger*, 602 F.3d 1019, 1033 (9th Cir. 2010) (“*Rincon*”).

22 61. Section 5.2 of the 2018 Compact does not satisfy any of the
23 preconditions set forth in *Rincon* for a revenue sharing provision, and thus
24 constitutes a State-imposed tax, fee, or other assessment in violation of 25 U.S.C. §
25 2710(d)(4). Moreover, the requirements of Section 5.2 are not directly related to the
26 operation of class III gaming activities. As such, the provision is not consistent with
27 IGRA, never was considered approved by the Secretary, and thus is unenforceable.
28

COUNT TEN

(Required Adoption of California Environmental Laws and Regulations)

62. Section 11 and the related definitional sections (*see* 2.13, 2.14, 2.20, 2.25, 2.27, 2.31) of the 2018 Compact effectively require the Morongo Band to adopt as its own and to implement the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.*, and its associated regulations for on-Reservation projects that otherwise would not be subject to such laws and regulations, that are not directly related to the operation of class III gaming activities, that interfere with the Morongo Band’s ability to govern itself, proceed with a project, or otherwise use its tribal trust lands.

63. Section 11 of the 2018 Compact and its related definitional sections are not directly related to the operation of class III gaming activities, are not consistent with IGRA, never were considered approved by the Secretary, and are thus unenforceable.

COUNT ELEVEN

(Required Adoption of and Compliance With Federal Anti-Discrimination Laws)

64. Section 12.2(f) of the 2018 Compact requires the Morongo Band to enact an ordinance “that is consistent with federal laws” prohibiting workplace harassment, discrimination, and retaliation, and that waives the Morongo Band’s sovereign immunity to employee suits for money damages based on such claims. These workplace protections in Section 12.2(f) effectively subject the Morongo Band to both the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”), and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

65. Both the ADA and Title VII specifically exclude Indian tribes from the definition of “employer.” *See* 42 U.S.C. § 12111(5)(B)(i); 42 U.S.C. § 2000e(b).

COUNT THIRTEEN

(Required Compliance With California’s Minimum Wage Law)

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3 70. Section 12.2(k) of the 2018 Compact requires the Morongo Band to
4 comply with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and
5 implementing regulations with which the Morongo Band must comply in any
6 event.

7 71. Section 12.2(k) of the 2018 Compact also requires, with respect to all
8 Gaming Operation employees except tipped employees—even those whose duties
9 are not directly related to the operation of class III gaming activities—that the
10 Morongo Band comply with the State’s minimum wage law established pursuant to
11 Cal. Lab. Code § 1182.12 and the State’s regulations implementing the State’s
12 minimum wage law.

13 72. California’s minimum wage law and regulations implementing that
14 law would not apply to the Morongo Band’s Gaming Operation absent the 2018
15 Compact.

16 73. California’s minimum wage law and regulations implementing that
17 law are not directly related to the operation of the Morongo Band’s class III gaming
18 activities. Thus, Section 12.2(k) of the 2018 Compact is not consistent with IGRA,
19 never was considered approved, and thus is unenforceable.

20 74. Even if California’s minimum wage law and regulations implementing
21 that law were a permissible subject of negotiation under IGRA when applied to
22 employees whose duties are directly related to the operation of class III gaming
23 activities, Section 12.2(k) of the 2018 Compact applies the California minimum
24 wage law to employees whose duties are not directly related to the operation of the
25 Morongo Band’s class III gaming activities. To that extent, Section 12.2(k) is not
26 consistent with IGRA, it never was considered approved by the Secretary, and thus
27 is unenforceable.
28

COUNT FOURTEEN

(Required Waiver of Sovereign Immunity to Personal Injury Claims)

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3 75. Section 12.4 of the 2018 Compact requires the Morongo Band to carry
4 at least \$10,000,000 in general commercial liability insurance, to waive its
5 sovereign immunity, and to create a process for adjudicating claims, applying
6 California tort law,

7 for bodily injury, personal injury, or property damage,
8 arising out of, connected with, or relating to the operation
9 of the Gaming Operation, Gaming Facility, or the Gaming
10 Activities, including, but not limited to, injuries resulting
11 from entry onto the Tribe’s land for purposes of
12 patronizing the Gaming Facility or providing goods or
13 services to the Gaming Facility; provided, that such injury
14 occurs at the Gaming Facility or on a road accessing the
15 Facility exclusively.

16 76. Section 12.4 of the 2018 Compact imposes California tort law on the
17 Morongo Band and requires the Morongo Band to insure against and waive its
18 sovereign immunity to claims based on personal injury or property damage not
19 directly related to the operation of the Morongo Band’s class III gaming activities.
20 Not being directly related to the operation of the Morongo Band’s class III gaming
21 activities, Section 12.4 of the 2018 Compact is not consistent with IGRA, and
22 therefore was never considered approved, and is thus unenforceable.

COUNT FIFTEEN

**(Required Collection and Remittance of Unemployment Insurance and
Income Taxes)**

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24
25
26 77. Section 12.5(d) of the 2018 Compact requires the Morongo Band to
27 act as the State’s collection agent for California unemployment insurance taxes
28 owed by all Gaming Operation employees, including employees having no

1 involvement in the regulation or operation of gaming activities or maintenance of
2 the Morongo Band’s Gaming Facilities, and to withhold and report to the State,
3 California income taxes on the earnings of all Gaming Operation employees except
4 for enrolled Morongo Band members actually living on the Reservation, including
5 employees having no involvement in the regulation or operation of gaming
6 activities or maintenance of the Morongo Band’s Gaming Facilities.

7 78. The requirement that the Morongo Band collect and remit to the State
8 the unemployment insurance and income taxes from the wages of Gaming
9 Operation employees, including employees whose duties do not involve the
10 operation of class III gaming activities, is not directly related to the operation of
11 class III gaming activities and thus is not consistent with IGRA, and therefore was
12 never was considered approved, and is thus unenforceable.

13 **COUNT SIXTEEN**

14 **(Required Enactment and Compliance with the State-imposed Tribal Labor** 15 **Relations Ordinance)**

16 79. Section 12.9 of the 2018 Compact requires the Morongo Band to enact
17 and maintain in force a Tribal Labor Relations Ordinance (“TLRO”) attached to the
18 Compact as Appendix B, the exact terms of which were dictated by the State
19 without any negotiation, notwithstanding that the Morongo Band already had
20 enacted a previous State-approved TLRO, that its Gaming Operation is subject to
21 the jurisdiction of the National Labor Relations Board, and the Gaming Operation’s
22 employees have full organizational and representational rights thereunder
23 consistent with the State’s public policy as articulated in Cal. Lab. Code § 923.

24 80. The TLRO, which applies to all but a few categories of Gaming
25 Operation employees, as well as to employees in related facilities in which no class
26 III gaming activities are conducted, gives labor unions more rights than the
27 organizational and representational rights conferred by the National Labor
28 Relations Act, 29 U.S.C. § 151 (“NLRA”), deprives the Morongo Band and

1 employees of the Gaming Operation and related facilities of rights otherwise
2 conferred by the NLRA, applies to Morongo Band employees whose duties are not
3 directly related to the operation of the Morongo Band's class III gaming activities,
4 and discriminates against the Morongo Band relative to other non-tribal California
5 employers subject to the NLRA. For these reasons, Section 12.9 of the 2018
6 Compact is not consistent with IGRA, and therefore never was considered
7 approved, and is thus unenforceable.

8 **COUNT SEVENTEEN**

9 **(Required Recognition of California Spousal and Child Support Orders)**

10 81. Section 12.10 of the 2018 Compact requires the Morongo Band to
11 recognize and enforce State of California spousal and child support orders against
12 all employees of the Gaming Operation and Gaming Facility, including enrolled
13 tribal members.

14 82. Section 12.10 applies without regard to whether employees' job
15 responsibilities are directly related to the operation of class III gaming activities.

16 83. The enforcement of California spousal and child support orders is not
17 a subject that is directly related to the regulation or operation of class III gaming
18 activities and, thus, may not be included in a compact consistent with IGRA.
19 Therefore, Section 12.10 is not consistent with IGRA, and therefore was never
20 considered approved, and is thus unenforceable.

21 WHEREFORE, Plaintiff prays for relief as follows:

22 1. that the Court declare that the provisions of the Morongo Band's 2018
23 Compact enumerated in Counts One through Seventeen of the Complaint herein are
24 inconsistent with IGRA, were never considered approved by the Secretary of the
25 Interior, and are thus unenforceable;

26 2. that the Court declare that the State was required, but failed, to provide
27 meaningful concessions to the Morongo Band in exchange for requiring the Band's
28 payment of money as described in Counts 4, 6, 7, 8, and 9;

1 3. that the Court enter judgment preliminarily and permanently enjoining
2 Defendants from enforcing each of the provisions of the Morongo Band’s 2018
3 Compact enumerated in Counts One through Seventeen of the Complaint herein;

4 4. that the Court order the State to provide to the Morongo Band an
5 accounting for the costs that the State reasonably and necessarily incurred in
6 exercising its right under the 2018 Compact to oversee regulation specifically of
7 the Morongo Band’s class III gaming activities, and to permit the Morongo Band to
8 offset against its future payments into the Indian Gaming Special Distribution Fund
9 the amount by which the Morongo Band’s payments into the Indian Gaming
10 Special Distribution Fund since January 22, 2018 have exceeded the costs that the
11 State reasonably and necessarily incurred in exercising its right under the 2018
12 Compact to oversee regulation specifically of the Morongo Band’s class III gaming
13 activities;

14 5. that if the Court determines that the Morongo Band has a continuing
15 obligation to pay into the Indian Gaming Revenue Sharing Trust Fund, the Court
16 shall order that the amount that the Morongo Band is obligated to pay into the
17 Indian Gaming Revenue Sharing Trust Fund be reduced to the amount that, in
18 combination with all other California tribes’ payments into said Fund, will assure
19 that each California tribe eligible to receive distributions from that Fund will
20 receive \$1,100,000 per year, and that no portion of the Morongo Band’s payments
21 into that Fund may be transferred to the Tribal Nation Grant Fund; and

22 6. that the Court award to the Morongo Band its costs of suit and such
23 other relief as the Court deems just, provided that the State may not pay the
24 Morongo Band’s costs out of the Indian Gaming Special Distribution Fund, the
25 Indian Gaming Revenue Sharing Trust Fund, or the Tribal Nation Grant Fund.

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Dated: May 6, 2025

Respectfully submitted,

By: /s/ George Forman
George Forman
FORMAN SHAPIRO & ROSENFELD LLP
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